

Item W07-07 Response Form

Title: Probate: Instructions for Starting a Probate Guardianship and for Serving Documents at the Beginning of the Case (adopt Judicial Council forms GC-505 and GC-510)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 26, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.

Invitation to Comment W07-07

Title	Probate: Instructions for starting a probate guardianship and for serving documents at the beginning of the case (adopt Judicial Council forms GC-505 and GC-510)
Summary	The proposed forms would provide information and instructions to unrepresented persons on how to start a probate guardianship of the person of a child, and to arrange for service of required documents on interested parties at the beginning of the case.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller (415) 865-7535 douglas.miller@jud.ca.gov
Discussion	<p>Many, if not a majority, of people who petition California courts for appointment of a guardian of the person of a child are unrepresented by counsel. These petitioners are often poor, lack higher education, or are inexperienced and unsophisticated in legal matters. Professional fiduciaries generally do not accept appointments as guardians of the persons of children without estates, and most children in guardianships do not have estates.</p> <p>Probate guardianship procedure is technical, complex, and difficult to understand, especially at the beginning of a case. Guardianships are fundamentally different from the types of criminal and civil litigation with which lay persons may be familiar.</p> <p>The Probate and Mental Health Advisory Committee is addressing these problems by recommending Judicial Council adoption of two instructional forms designed for unrepresented guardianship petitioners. The first form, <i>Forms You Need to Ask the Court to Appoint a Guardian of the Person</i> (form GC-505) explains the steps necessary to start a guardianship, focusing on the forms required and explaining what happens at each stage when they are filed. The last page of the form provides valuable resource information that may assist many guardianship petitioners.</p> <p>The second form, <i>What is "Proof of Service" in a Guardianship?</i> (Form GC-510), explains the requirements for service of the Notice of Hearing and the petition for appointment of a guardian at the commencement of a guardianship, and proving service to the court.</p>

Invitation to Comment W07-____

The advisory committee understands that these two issues may be the most difficult for lay guardianship petitioners to understand.

These forms were prepared in the “plain-language” format that has been used in recent years for domestic violence prevention, adoption, and, most recently, elder abuse protection forms. The forms feature checkboxes that users can check to indicate that a particular step applies to their case or that they have completed it.

Form GC-505 refers to the latest general guardianship petition forms adopted by the Judicial Council, effective January 1, 2007. These are the new plain-language *Petition for Appointment of Guardian of the Person* (Form GC-210(P)), and the *Guardianship Petition—Child Information Attachment* (Form GC-210(CA)). These are the first plain-language forms available for a matter under the Probate Code. The plain-language petition is intended to be used by unrepresented persons to request the appointment of a guardian of a child’s person, although the existing standard-format petition, form GC-210, may also be used for this purpose, at the option of the petitioner. Form 505 explains this option, and recommends that unrepresented persons use the new petition.¹

The advisory committee plans to develop Spanish-language versions of the new plain-language guardianship petitions and these instructional forms. The committee desires comments concerning the need for versions of these forms in other languages.

The advisory committee also requests comments on the development of plain-language versions of other existing guardianship and conservatorship forms, and additional instructional material.

Copies of forms GC-505 and GC-510 are attached beginning at page 3.

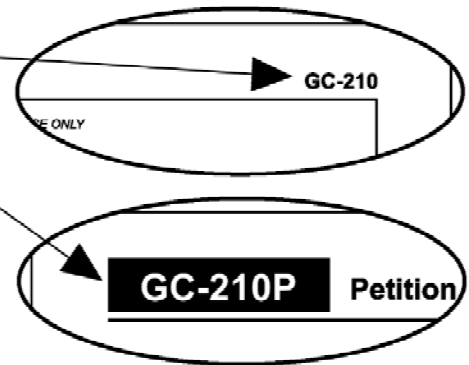
Attachments

¹ See revised rule 7.101(b) of the California Rules of Court, adopted effective January 1, 2007.

Look at the numbers at the top of a form to match them with the form numbers listed below. You can use this form as a checklist.

Draft 11, 10/27/06
Not Approved by the Judicial Council

OR



What forms do I use to ask the court to appoint me as the guardian of the person of a child?

- ① **Fill out and file with the court *either* of the following form petitions ("your petition"):**
 - ☐ *Petition for Appointment of Guardian of the Person (Form GC-210(P))* (recommended if you won't have an attorney to help you); **or**
 - ☐ *Petition for Appointment of Guardian of Minor (Form GC-210).*
- ② **Fill out the following forms and attach them to or file them separately with your petition:**
 - ☐ **Attach to your petition** a *Guardianship Petition—Child Information Attachment (Form GC-210(CA))* for **each** child you think needs a guardian.
 - ☐ **Attach to your petition** a *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Form FL-105/GC-120)* concerning all children you think need a guardian.
 - ☐ **File separately, but with your petition** a *Confidential Guardian Screening Form (Form GC-212)*. This form is confidential, under the direct control of the court, and not available to the general public.
 - ☐ **File any local forms your court requires to be filed with your petition** (check your court's local rules and practices for deadlines and procedures for filing and the court's handling of these forms).

What if I want someone other than myself to be appointed as the child's guardian?

In addition to the steps mentioned above, you need to do the following:

- ③ ☐ The *Confidential Guardian Screening Form (form GC-212)* mentioned above must be filled out and signed not by you, but instead by the person you want the court to appoint as guardian.
- ④ ☐ **File with your petition** a *Consent of Proposed Guardian (Form GC-211, item 1, top part of form)*, signed by the person you want the court to appoint. You do not need this form if you are asking to be appointed guardian or if the person you want the court to appoint joins (signs) your petition as an additional petitioner.

What do I do if I can't afford to pay the court's filing fees?

- ⑤ ☐ **Fill out and file with your petition** an *Application for Waiver of Court Fees and Costs (Form FW-001)*, and a proposed *Order on Application for Waiver of Court Fees and Costs (Form FW-003)* for the judicial officer to sign.

What happens when I file my petition?

The court clerk will give you a case number and a date, time, and place for the judge to hear your request for appointment of a guardian.

What forms do I need after I file my petition and have a hearing date?

- 6 ☐ **If one or both of the child's parents will agree (consent) to the guardianship**, fill out and have each consenting parent date and sign a *Consent to Appointment of Guardian and Waiver of Notice* (**Form GC-211, item 4 at the bottom of the form**). File the form with the court when you file the *Notice of Hearing*, discussed below.
- 7 ☐ Fill out the first page of a *Notice of Hearing—Guardianship or Conservatorship* (**Form GC-020**), called a “*Notice of Hearing*.”
- 8 ☐ Follow the instructions in *What is “Proof of Service” in a Guardianship?* (**Form GC-510**) for **personal service** of copies of your petition and the *Notice of Hearing*, and to show the court that service has been made.
- 9 ☐ Follow the instructions in *What is “Proof of Service” in a Guardianship?* (**Form GC-510**) for **service by mail** of copies of your petition and the *Notice of Hearing*, and to show the court that service has been made.
- 10 ☐ **File with the court the original *Notice of Hearing* with attached original filled-in and signed proofs of service by mail and by personal service at least 5 days before the hearing on your petition.**
- 11 ☐ **Fill out and file the following forms with the court at or before the hearing on your petition** (check your court's local rules and practices for deadlines and procedures for delivery, filing, and the court's handling of these forms):
 - ☐ *Duties of Guardian and Acknowledgment of Receipt* (**Form GC-248**);
 - ☐ *Order Appointing Guardian of Minor* (**Form GC-240**); and
 - ☐ *Letters of Guardianship* (**Form GC-250**).
- 12 ☐ **Fill out and file any local forms your court requires at or before the hearing on your petition** (check your court's local rules and practices for deadlines and procedures for delivery, filing, and the court's handling of these forms).

Need help?

- 13 Your court may have a self-help center or a volunteer assistance program that can help you with a guardianship, or the court may be able to refer you to other organizations in your area that can help you.
- 14 If you can get on the Internet, you can go to the California Courts Self-Help Center Web site, at www.courtinfo.ca.gov/selfhelp/family/guardianship (English) or www.courtinfo.ca.gov/selfhelp/espanol/familia/tutela (Spanish). This Web site provides information about the guardianship process and about other resources available to you. Once there, you can also download a copy of the *Guardianship Pamphlet* (**Form GC-205**). The pamphlet has a basic explanation of a guardianship case, and is available in English, Chinese, Korean, Spanish, and Vietnamese. You can also get blank copies of the forms identified above from this Web site and you can even fill out the forms on your computer and print them out ready for signing and filing, free of charge. All of these forms are also available from your court.
- 15 You can also go to www.courtinfo.ca.gov/courts/trial/courtlist.htm. This page has links to every superior court's Web site. The site for your court can tell you where to file your forms, where to go for court hearings, and can advise you about local forms, rules, and practices that you need to learn about during the progress of your case.
- 16 Many courts' Web sites have links to an interactive forms preparation program, EZLEGAL File. This program can help you fill out guardianship forms by having you answer simple questions. Your answers would be placed in the proper forms, which then could be printed out ready for signing and filing with the court.

GC-510**What is "Proof of Service" in a Guardianship?****What is "service"?**

- The law requires a person involved in a court case to arrange for "service," or delivery, of copies of important papers the person files with the court to other people involved in the case. Depending on the circumstances, there are several ways papers may be served, including by personal delivery ("personal service") or by mail ("service by mail").
- At the beginning of a guardianship case the petitioner—the person who is asking the court to appoint a guardian for a child—must arrange for personal service of papers on certain people, must see that these papers are served on other people by personal service or by mail, and then must show the court that this service has been completed.
- This form explains what papers must be served, who must be served with these papers, how and when these papers and persons must be served, and how and when to show the court that service has been made at the beginning of a guardianship case (guardianship of the person). You can find out more about the papers that must be filed at the beginning of a guardianship in a form available from the court, called *Forms You Need to Ask the Court to Appoint a Guardian of the Person* (Form GC-505).

What papers must be served in a guardianship of the person?

- A filled-in copy of the petition for appointment of a guardian (the "*Petition*").
(In a guardianship of the person, this may be either the *Petition for Appointment of a Guardian of the Person* (Form GC-210(P)) or the *Petition for Appointment of Guardian of Minor* (Form GC-210).) Copies of all papers attached to the *Petition* must also be served with it.
- A filled-in copy of a *Notice of Hearing—Guardianship or Conservatorship* (Form GC-020) (the "*Notice of Hearing*") showing the date, time, and place of the hearing on the *Petition*, including (unsigned) copies of all attachments showing proof of service.

Who must be personally served?

(You may use this form as a checklist. Check all that apply to your case.)



Don't serve these by mail!

- ☐ If he or she is at least 12 years old, the child for whom the *Petition* asks the court to appoint a guardian.
- ☐ The child's parents.
- ☐ Any person who has legal custody of the child or is serving as court-appointed guardian of the child's estate.
- ☐ Any person nominated as guardian of the child by the child's parent or parents.
- ☐ Any person nominated as guardian of the estate of the child for property received by the child from or by designation from the person making the nomination.

How do I arrange for personal service?

Someone—not you or anyone else who signed the *Petition*—must personally serve (hand-deliver) copies of the *Notice of Hearing* and the *Petition* to the persons named above. Service lets these persons know:

- That you are asking the court to appoint a guardian for the child or children named in the *Petition*.
- The person you want the court to appoint as guardian (either yourself or someone else).
- The date and time when, and the place where, the court will hear your request.

Who can serve?

Ask someone you know, a registered process server, or a representative of the county sheriff's civil division, to personally serve a copy of the forms to the persons named above. The forms **cannot** be sent to those persons by mail.

- The server must be at least 18 years of age.
- A registered process server is a business you pay to deliver court forms. Look in the Yellow Pages, under "Process Serving."
- The sheriff's civil division usually has an office at your courthouse. You will also have to pay for its services.

How does the server personally serve the *Notice of Hearing* and the *Petition*?

Ask the server to:

- Walk up to each person to be served and make sure he or she is the right person.
- Give each person copies of the filled-out *Notice of Hearing* and the *Petition*.
- Fill out and sign a *Proof of Personal Service of Notice of Hearing* (Form GC-020(P)). If the server delivers papers to more people than can be listed on this form, have the server add the names of the additional people served on one or more copies of an *Attachment to Notice of Hearing Proof of Personal Service* (Form DE-120(PA)/GC-020(PA)).
- Give the filled-out and signed *Notice of Hearing Proof of Personal Service* and any attachment pages back to you.

What if the person served won't take the papers or tears them up?

The server must attempt to make personal delivery even if the person served won't take the papers. It doesn't matter if the person tears them up or throws them down after they are handed to him or her. (A registered process server or sheriff's deputy will know how to complete a good service.)

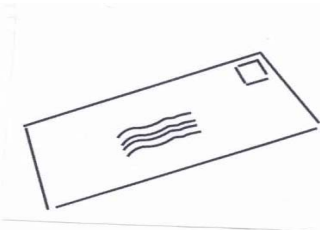
Who signs the Proof of Service?

- Only the person who serves the *Notice of Hearing* and the *Petition* can sign the *Notice of Hearing Proof of Personal Service*. Neither you, any other petitioner, nor the person served may sign this form.
- If more than one person personally serves papers, each of them must fill out and sign his or her own separate *Notice of Hearing Proof of Personal Service* form showing the names of those persons that he or she serves.

Who must be served with a *Notice of Hearing* and a *Petition*, but may be served by mail?

(You may use this form as a checklist. Check all that apply to your case.)

- ☐ The child's relatives listed in the child's *Guardianship Petition—Child Information Attachment* (Form GC-210(CA)), attached to the *Petition*:



- ☐ Grandfather (father's father)
- ☐ Grandmother (father's mother)
- ☐ Grandfather (mother's father)
- ☐ Grandmother (mother's mother)
- ☐ Brother(s) (including half-brothers) (if 12 years of age or older)
- ☐ Sister(s) (including half-sisters) (if 12 years of age or older)

These may be served by mail!

- ☐ If the child has a brother or sister under the age of 12, copies of the *Notice of Hearing* and the *Petition* may be mailed to one of the following persons for him or her instead of mailing directly to the young brother or sister:
- ☐ The brother's or sister's parent;
 - ☐ A court-appointed guardian of the brother or sister; or
 - ☐ A person having legal custody of the brother or sister who lives with that brother or sister.
- (If a parent, guardian, or legal custodian of a brother or sister of the child involved in the case is a petitioner, service of notice to that person on behalf of the brother or sister is not necessary.)*
- ☐ Any person having the physical care of the child who does not have legal custody of the child.
- ☐ If your petition requests appointment of a guardian of the person who is not related to the child, the Director of the Department of Social Services, Children's Services Operations and Evaluation Branch, 744 P Street MS 3-34, Sacramento, CA 95814.
- ☐ Your court may require you to serve other persons or organizations by mail. Check your court's local rules and practices to find out if this applies to you.

Who may be served by mail ? (Continued)

- ☐ **If the child is a patient in, or on leave from, a state hospital run by the State Departments of Mental Health or Developmental Disabilities**, to the Director of that department. Send the *Notice of Hearing* and the *Petition* to the Director of Mental Health at 1600 Ninth Street, Room 151, Sacramento, CA 95814. Send these papers to the Director of Developmental Disabilities at 1600 Ninth Street, Room 240, Sacramento, CA 95814, Attn.: Office of Legal Affairs.
- ☐ **If the child has developmental disabilities and the person you want the court to appoint as guardian is: (1) not the child's natural parent; (2) a provider of services to persons with developmental disabilities or the spouse or an employee of a provider; and (3) not a public agency**, to the Director of the Regional Center for the Developmentally Disabled in the child's county. **(30 days' notice.)**

Who need not be served (unless the court orders otherwise)?

Unless the courts orders that they be served, you do not need to arrange for service on the parents or other relatives of a child who has been relinquished to a licensed adoption agency, or the parents of a child a court has declared to be free from the parents' custody and control.

How do I arrange for service by mail?

Someone—not you or anyone else who signed the *Petition*—must do the mailing to the persons and organizations named above that are involved in your case.

Who can serve by mail?

- The person doing the mailing must be at least 18 years of age.
- He or she must not be a petitioner or a proposed guardian in your case.
- He or she must live or be employed in the county where the mailing (deposit with the Postal Service) takes place.

How does the server serve the *Notice of Hearing* and the *Petition* by mail?

Ask the server to:

- Deposit with the US. Postal Service, with first-class postage prepaid, sealed envelopes (9" x 12" or 10" x 13" Manila envelopes are recommended) addressed to the persons or organizations listed above that apply to your case. The envelopes should contain filled-in copies of the *Notice of Hearing—Guardianship or Conservatorship* (Form GC-020) and the *Petition*, including all attached pages mentioned in it.
- Mail the envelopes for the relatives of each child to the addresses shown for these relatives in each child's *Guardianship Petition—Child Information Attachment* (Form GC-210(CA)) attached to the *Petition*.
- Fill out, date, and sign the *Proof of Service* on the second page of the original *Notice of Hearing*. **Don't sign that form yourself.**
- If there are more than four persons being served by mail, continue the list of persons served by mail on one or more copies of an *Attachment to Notice of Hearing Proof of Service by Mail* (Form DE-120(MA)/GC-020(MA)).
- Give the filled-out and signed *Proof of Service* and all filled-out attached pages back to you.

When must the *Notice of Hearing* and the *Petition* be served?

- When you file your *Petition*, the court clerk will give you a date and time when, and a court department or place where, the court will hear your request for appointment of a guardian.
- Once you have the date, time, and place of the hearing, that information must be filled in on the *Notice of Hearing—Guardianship or Conservatorship* (Form GC-020), and that form and the *Petition*, with all pages attached to it, must then be personally served or served by mail on the persons and organizations mentioned above that apply to your case.

When must the *Notice of Hearing* and the *Petition* be served? (Continued)

- With the exception noted below, **personal service and service by mail must be completed at least 15 days before the date of the hearing.**
- If service must be made on the Director of the Regional Center for the Developmentally Disabled for the child's county, **service must be completed at least 30 days before the hearing.** If the child in your case is developmentally disabled and you think you may have to serve a Regional Center director, when you file your *Petition* you can ask the clerk for a later hearing date because you will need more time than usual to serve the *Notice of Hearing*.

What happens if the papers aren't served in time?

If the *Notice of Hearing* and *Petition* aren't served in time, the court will have to continue (postpone) the hearing date on your petition. This will delay appointment of a guardian for the child or children involved in your case.

What do I do with the completed *Notice of Hearing* and the attached proofs of personal service and service by mail?

- File with the court at least 5 days before your hearing date the original *Notice of Hearing—Guardianship or Conservatorship* (Form GC-020) with the filled-out and signed *Proof of Service* on the second page, the filled-out and attached *Proof of Personal Service of Notice of Hearing—Guardianship or Conservatorship* (Form GC-020(P)), and all attached pages showing additional persons served. File these papers with the court as soon as you can, as many days before your hearing as you can.
- When you file the *Notice of Hearing*, take an extra copy with you for the court to stamp, showing that the original *Notice of Hearing* was filed on that day.
- Bring that copy with you to the hearing.